Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

NO. 74-1506

DONALD M. FISHER and MELVIN P. FISHER, as Trustees under the Last Will and Testament of BERNARD FISHER, deceased, ROSLYN MILLER, BERNICE GOLD and PHILIP ADLER,

Petitioners,

v.

CITY OF SYRACUSE and SYRACUSE URBAN RENEWAL AGENCY,

Respondents.

SIDNEY BLUMAN, individually and as Executor of the Last Will and Testament of ISRAEL HURWITZ, deceased,

Petitioner,

v.

CITY OF SYRACUSE and SYRACUSE URBAN RENEWAL AGENCY,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK, FOURTH DEPARTMENT

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May 26, 1975.

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PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK, FOURTH DEPARTMENT

The petitioners respectfully pray that a writ of certiorari issue to review the judgments and opinions of the Appellate Division of the Supreme Court of the State of New York, Fourth Department, entered in this proceeding on December 12, 1974.[1] This was the highest

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[1] The Court of Appeals of the State of New York, by order dated March 19, 1975, denied petitioners' motion for leave to appeal.

Court of the State of New York which considered the case on the merits.

Opinions Below

The opinion of the Appellate Division and the concurring opinion of Goldman, *J.*, dated December 12, 1974, are reported in 46 A.D.2d 216, 361 N.Y.S.2d 773, and appear in the Appendix hereto. An opinion was rendered at Special Term of Supreme Court, Onondaga County, dated March 27, 1974, reported in 78 Misc.2d 124, 355 N.Y.S.2d 239, and appears in the Appendix hereto. This decision was rendered on a motion to dismiss the complaints.

Jurisdiction

An order of the Court of Appeals of the State of New York denying petitioners leave to appeal to the Court of Appeals was entered March 19, 1975 and this petition for certiorari was filed within 90 days of that date. This Court's jurisdiction is invoked under 28 U.S.C. §1257.

Question Presented

Where a condemnor includes certain property in a proposed improvement area, such as a renewal area, and over a period of many years condemns many parcels contiguous to and in the vicinity of such property, thereby creating what is known as "condemnation blight," resulting in devaluation of the property, loss of rental income, payment of excessive insurance premiums and expenses to protect the property from vandalism, even though the property has not been "taken" either *de facto* or *de jure*, may not the condemnor be held liable for such damages

on the theory of violation of the due process and equal protection clauses of the Fourteenth Amendment?

Constitutional Provisions Involved

Fourteenth Amendment of the United States Constitution

> "* * * nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Statement of the Case

Both actions are brought on the theory of "condemnation blight" for damages by reason of the diminution in property value, lost rental income and increased and unrequited costs of maintenance and protection of property.

The petitioners, plaintiffs in each of the actions herein, are respectively the owners in fee of certain parcels of improved property more specifically described in the complaints.

The complaints allege as follows:

> (a) Beginning in 1962 plans, affecting the area in which their properties are located, were commenced for a comprehensive urban renewal in the form of a General Neighborhood Renewal Plan. In April of 1964 the Common Council of the City of Syracuse approved an ordinance authorizing City sponsorship of an application to the Federal Government for a planning grant and thereafter received a grant. On September 12, 1966, the Common Council approved an initial partial acquisition for the purposes of the plan. On October 14, 1966, the City of Syracuse submitted a

plan of acquisition of another part of the renewal area, which plan included the plaintiffs' properties. On June 10, 1969, the Common Council of the City of Syracuse changed the project from General Neighborhood Renewal Plan to Neighborhood Development Plan and on June 22, 1969, the Common Council approved the project. For more than ten years, the above mentioned events and activities associated with such events were the subject of wide and frequent publicity in the newspapers in the City of Syracuse and the subject of frequent correspondence and conferences between the parties to these actions.

(b) Pursuant to the foregoing plans and authorizations the respondents have acquired title to many parcels in the area and to several parcels in each of the blocks in which the petitioners' respective properties are located. Many buildings have been demolished and others have been boarded up.

(c) As a result of the inordinately long and dilatory tactics of the respondents, the vicinity of the petitioners' properties has suffered a condemnation blight which has transformed the area into one which is highly undesirable for either residential or commercial purposes. The area has become a high-crime area, vandalism is rampant, and it is not safe to live or work there. Both residential and commercial tenants have moved from the area, the petitioners have lost substantial amounts of rental income, they have been placed in a special insurance pool which forced them to pay excessive premiums, they have been compelled to expend monies to protect the property from vandalism, and their property has been drastically reduced in value.

(d) Although petitioners' properties are in the renewal area and although the Bluman properties throughout the foregoing periods have been designated for acquisition, no proceedings have been commenced to condemn the said properties nor has any step been taken to compensate the petitioners for the damage which they have suffered as a result of the foregoing action of the respondents.

The constitutional question involved was raised in the complaints which are included in the Appendix hereto.

Reasons for Granting the Writ

The actions of the respondents, imposing a condemnation blight upon the petitioners for an unreasonable period of time, constitute a violation of the due process and equal protection clauses of the Fourteenth Amendment to the Federal Constitution.

The sole issue in these causes is purely one of law. The actions at bar are not based upon an alleged *de facto* taking nor do the petitioners seek to compel the respondents to institute proceedings for the condemnation of their properties. They seek merely to recover damages by reason of a violation of due process and the equal protection of the laws.

The facts are undisputed and show a classic example of condemnation blight as a result of urban renewal activities by the respondents extending over a period in excess of eleven years. The area has for many years been rendered undesirable for either residential or commercial purposes. It is now a high-crime area; vandalism is rampant; and it is not safe to live or work there. As a result both

residential and commercial tenants have moved from the area.[2]

The foregoing undisputed conditions have resulted in the following conceded items of damage:

(1) Loss of rental income;

(2) Excessive insurance premiums;

(3) Unrequited expenses to protect the property from vandalism; and

(4) Reduction in value of the properties.

A. ***As to reduction in value of the properties.***

Despite the depreciation in value of the properties, if ultimately the property is acquired by eminent domain, the law is established that the condemnee will be made whole by allowing the value on the date of the taking as unaffected by the depreciating influence of the condemnation blight. Thus, in *City of Buffalo* v. *J.M. Clement Co. Inc.*, 28 N.Y. 2d 241, 321 N.Y.S. 2d 345, 269 N.E. 2d 895 (1971), the Court of Appeals said (28 N.Y. 2d, at 255; 321 N.Y.S. 2d, at 357):

> "In such a case, compensation shall be based on the value of the property at the time of the taking, as if it had not been subjected to the debilitating effect of a threatened condemnation."

[2] See *City of Cleveland* v. *Hurwitz*, 19 Ohio Misc. 184, 190, 249 N.E. 2d 562, 567 (1969), in which the Court said: "The central issue here is not the willful or intentional acts of the city, it is the natural and probable consequence of the acts or the failure to act on the part of the city. It is the cumulative result of many things, each in itself that might not have been totally harmful, but when impacted all together have the full force of destruction of the property * * *."

This is all well and good insofar as properties so affected in the area are ultimately actually taken if the owners have managed to survive until that date.[3] But what of those owners, such as the petitioners herein, whose properties are similarly affected depreciatively for the very same reasons, whose property has not been taken and may never be taken?

Here are parcels in the renewal area which have been adversely affected value-wise in precisely the same manner, by the same forces and for the same reasons as those parcels which have been taken. Is this the equal protection of the laws? And do not the due process factors which protect owners whose property is taken also protect those whose property is not taken?

This Court should give due regard to the basic constitutional concept that the Bill of Rights was deliberately added to the Federal Constitution as a means of guaranteeing the individual's *personal* rights. Indeed, Justice Holmes made the well-known observation that constitutions deal "with persons, not with tracts of land" (*Boston Chamber of Commerce* v. *Boston*, 217 U.S. 189, 195, 54 L.E.d. 725, 30 S.Ct. 459 [1910]). Only recently Justice Stewart, in *Lynch* v. *Household Finance Corp.*, 405 U.S. 538, 551-2, 31 L.Ed. 2d 424, 434-5, 92 S.Ct. 1113, 1121-2 (1972), said:

> "The federal courts have been particularly bedeviled by 'mixed cases' in which both the personal and property rights are implicated, and the line between them has been difficult to draw with any consistency or principled objectivity. The case before us presents a

[3] Compare *Sarff* v. *City of Whittier*, 8 Cal. 3d 39, 104 Cal. Rptr. 1, 500 P. 2d 1345 (1972), where the debilitating effect of pre-condemnation blight caused the owner to lose his title by foreclosure prior to the taking by the city.

good example of the conceptual difficulties created by the test.

"Such difficulties indicate that the dichotomy between personal liberties and property rights is a false one. *Property does not have rights. People have rights. The right to enjoy property without unlawful deprivation, no less than the right to speak or the right to travel, is, in truth, a 'personal' right, whether the 'property' in question be a welfare check, a home or a savings account. In fact, fundamental interdependence exists between the personal right to liberty and the personal right in property. Neither could have meaning without the other. That rights in property are basic civil rights has long been recognized.*" (Emphasis added.)

Even more recently, in dealing with the concept of just compensation, this Court in *Almota Farmers Elevator & Warehouse Co.* v. *United States*, 409 U.S. 470, 478, 35 L.Ed. 2d 1, 10, 93 S.Ct. 791, 797 (1973), said:

"'The constitutional requirement of just compensation derives as much content from the basic equitable principles of fairness, United States v. Commodities Trading Corp., 339 U.S. 121, 124, 70 S.Ct. 98, 94 L.Ed. 525 (1950), as it does from technical concepts of property law.' United States v. Fuller, 409 U.S. 488, at 490, 35 L.Ed. 16, 20, 93 S.Ct. 801, 803."

B. *As to the incidental damages—loss of rental income, excessive insurance premiums and unrequited expenses to protect the property from vandalism.*

The further question arises as to economic losses produced by the blight other than the depreciation in value of the property itself—specifically, the loss of rents by reason

of the fact that tenants have failed to renew their leases and have vacated the premises, and the fact that the petitioners have been compelled, despite the absence or sharp reduction of income, to continue payments for taxes, increased insurance premiums, interest on mortgages, and increased costs of maintenance.

This is not to say that condemnation blight is equivalent to a *de facto* taking.[4] The point here is that the rationale which permits the valuation of the property to be made as of the date of formal acquisition, excluding consideration of the affirmative value-depressing acts implicit in condemnation blight, also justifies the consideration of lost rentals and other expenses directly attributable to the same cause.

If the owner is to be made truly whole, recognition should be given to the fact that condemnation blight can and does bring about two elements of damage:

(1) Diminution in the value of the property taken: and

(2) Loss of rentals and subjection to added expenses and costs during the period from the onset of condemnation blight to the time of the formal taking.

The courts have protected the owner as to the first element of damage, at least where the property is taken, but have spoken only sparsely as to the second. Disposition of the first element of damage by preserving the value against the debilitating effect of condemnation blight only accomplishes half the job of protecting the owner where

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[4] See, however: *Foster* v. *City of Detroit, Michigan*, 254 F.Supp. 655, 661-664 (Dist. Ct., E.D. Mich., S.D., 1966), aff'd 405 F.2d 138, 144 (6th Cir., 1968); *Drake's Bay Land Co.* v. *United States*, 424 F.2d 574 (Ct.Cl., 1970); *Amen* v. *City of Dearborn*, 363 F. Supp. 1267 (Dist. Ct., E.D., Mich., S.D., 1973).

there have been serious and substantial interim damages caused by the blight. Compensating the owner for the full undepressed *value* of his property does not compensate him for the lost *fruits* of that property while he remains as owner of the property and for the unrequited expenses he is put to in order to *preserve* his property until it is formally taken by the condemnor.

The rationale justifying the compensability of incidental damages generally, and rental losses and expenses specifically, under the "just compensation" clause and the rejection of the old concept of noncompensability under the "property" clause is fully supported by a recent decision of the Wisconsin Supreme Court—*Luber* v. *Milwaukee County*, 47 Wis. 2d 271, 177 N.W. 2d 380 (1970).

At issue in this case was the constitutionality of a new statute which allowed a limited recovery of pre-taking rental losses. The Court held that, since the owner had a constitutional right to the recovery of such loss, the statute was unconstitutional in that it limited such right. The Court said (177 N.W. 2d, at 383):

> "It is the respondents' position that compensation should be awarded for the physical property taken and that such was done when they awarded the fair market value of appellants' property. Respondents also maintain that 'consequential' damages, except as are provided by the legislature are *damnum absque injuria* and are to be suffered in legal silence. They justify the limitations of sec. 32.19(4), Stats., by, in effect, saying that what the legislature giveth, the legislature can taketh away.
>
> "Although such justification ignores the possibility that compensation for rental loss is a constitutional necessity rather than a legislative dole, much authority

> exists for the proposition that the constitution does not require compensation for consequential losses."

The Court considered the "property" concept, saying (177 N.W. 2d, at 384):

> "The question often before this court is thus whether there has in effect been a taking. In answering this question a court of necessity must define property and determine what *interests* in property are significant enough to be protected from a taking without compensation. In the instant case there is no question that the appellants' entire building was taken. The question is whether there are any *interests*, other than the building itself, for which appellants are constitutionally entitled to compensation.
>
> "Although the rule of no recovery for incidental or consequential damages has always prevailed in this country, it has been severely attacked by many legal scholars. Part of the reason for such attacks is that 'just compensation' clauses have often been interpreted to require compensation only when property is damaged, as distinguished from damages to the property owner. In other words, 'just compensation' has been considered an *in rem* rather than an *in personam* right.
>
> "It is the opinion of some writers that the fair market value standard of compensation . . . erroneously analyses the condemnor-condemnee relationship in terms of existing real and personal property concepts without regard to economic implications of the situation . . .
>
> ". . . In theory, the market value standard is directed toward compensating the condemnee for the *physical* property loss suffered; thus it generally excludes

recompense for incidental losses—losses typified by damage to or destruction of good will, expenses incurred in moving to a new location and profits lost because of business interruption or inability to relocate. In denying these losses, courts have recognized that such action constitutes a derogation of the indemnity principle and makes 'harsh' law. Nonetheless, the practice continues, justified by reasoning which, upon critical examination, reflects dubious wisdom and logic.

"We think that under property concepts one's interest in rental income is such as to deserve compensation under the 'just compensation' provision of the Wisconsin Constitution." (Emphasis added.)

Finally, the Court concluded (177 N.W. 2d, at 386):

"We believe that one's interest in rental loss is such as is required to be compensated under the 'just compensation' clause of art. I, sec. 13, Wis. Const. Sec. 32.19 (4), Stats., insofar as it limits compensation for the taking of such interest is in conflict with the state constitution. The rule making consequential damages *damnum absque injuria* is, under modern constitutional interpretation, discarded and sec. 32.19 (4), Stats., insofar as it limits compensation is invalid."

The Courts below attempted to distinguish the *Luber* case from the cases at bar by stating that the cited case involved an interpretation of "just compensation". But that is exactly the point we make for compensability. Wisconsin, like New York, is a "taking" state (Wis. Const. Art. I, sec. 13). The thrust of the *Luber* case is a shift from emphasis on the "taking" clause to emphasis on the "just compensation" clause—a shift from consideration of "property" *per se* to consideration of the "rights of owners" to

recover for real and actual losses which result from governmental action even though that action falls short of taking in the technical legal sense.

Even more recent than the *Luber* case is the decision of the California Supreme Court in *Klopping* v. *City of Whittier* and *Sarff* v. *City of Whittier*, 8 Cal. 3d 39, 104 Cal. Rptr. 1, 500 P. 2d 1345 (1972). These were actions in inverse condemnation for damages based on the original intent to condemn and on the resolution abandoning the condemnation proceeding and simultaneously announcing the city's intention to resume eminent domain action in the future.

The plaintiffs claimed that the fair market value of their properties declined as a result of the defendant's two announcements of intent to condemn made prior to instituting eminent domain proceedings. They contended also that because of the condemnation cloud hovering over their lands, they were unable fully to use their properties and that this damage, reflected in loss of rental income, should be recoverable. The Court agreed, holding that the test of liability was "the adverse economic effect of pre-condemnation publicity" (500 P. 2d, at 1351) rather than the *de facto* concept.

Responding to the owners' additional contention that they were unable fully to use their properties and thereby suffered a loss of rental income, the Court said (500 P.2d, at 1356):

"If as a result of precondemnation statements rental income is lost, the anticipated rental income would be diminished and a decline in the fair market value would follow. While we reiterate that the valuation date set statutorily at the issuance of the summons remains

intact, if the steps taken toward condemnation are to be disregarded when the condemnor acts reasonably, the condemnee must be compensated for loss of rental income attributable to such precondemnation publicity."

Certainly, in the case at bar this Court should find no difficulty, under the criterion of unreasonable delay, in finding liability. For a period in excess of eleven years the petitioners have been in limbo; their property has been sterilized; and all of the adverse effects of the dark cloud of condemnation blight have brought them economic ruin.

Perhaps the trend to greater recognition of these very real actual losses can be summerized in the words of Professor Donald G. Hagman, of U.C.L.A., who said:

"Perhaps further recognition that property has no feelings and that it is the dislocated owners and tenants who should be paid personal damages in addition to real property damages will lessen *property* blight." (Hagman, "Planning [Condemnation] Blight, Participation and Just Compensation: Anglo-American Comparisons, "4 Urban Lawyer, No. 3, pp. 434, 460 [Summer 1972]. Emphasis in the original.)

Manifesting this trend is the recent Connecticut case of *Levine* v. *City of New Haven,* 30 Conn. Sup. 13, 294 A. 2d 644 (1972), which involved, among others, causes of action for damages by reason of violations of the due process and equal protection clauses of the constitution.

In sustaining the complaint, the Court said (204 A. 2d, at 645):

"This court is of the opinion that if long periods of time elapse after initial condemnation proceedings and

there is no 'taking' for as long as, in this case, nine years, the property owner has a constitutional right to have his claim litigated.

"There is no question that property located within redevelopment project areas suffers drastically and that governmental authorities should minimize property owners' monetary losses as well as their frustrations. * * *

"The issue was clearly defined in *Pennsylvania Coal Co.* v. *Mahon*, 260 U.S. 393, 413, 43 S.Ct. 158, 159, 67 L.Ed. 322: 'Government hardly could go on if to some extent values incident to property could not be diminished without paying for every such change in the general law. As long recognized some values are enjoyed under an implied limitation and must yield to the police power. *But obviously the implied limitation must have its limits, or the contract and due process clauses are gone.* One fact for consideration in determining such limits is the extent of the diminution. When it reaches a certain magnitude, in most if not in all cases there must be an exercise of eminent domain and compensation to sustain the act. So the question depends upon the particular facts.'" (Emphasis added.)

The conceded facts in the case at bar clearly establish that the magnitude of the damages has reached a degree of severity warranting compensation. Special Term was in error when it characterized the cited case as one based on a "*de facto* taking" because the action was in the form of an inverse condemnation proceeding. The rationale of the case evinces a cause of action (inverse condemnation) based on "condemnation blight", not on a "*de facto* taking".

The Court below, in concluding that a "taking" was the *sine qua non* of a cause of action, relied on three cases—*Danforth* v. *United States*, 308 U.S. 271, 84 L.Ed. 240, 60 S.Ct. 231 (1939); *City of Buffalo* v. *J. W. Clement Company*, 28 N.Y. 2d 241, 321 N.Y.S. 2d 345, 269 N.E. 2d 895 (1971); and *Sayre* v. *City of Cleveland*, 493 F.2d 64 (6th Cir. 1974).

But *Danforth* involved an alleged taking of property. The Court agreed with the respondents that there had been no taking. *Danforth*, however, is distinguishable from the case at bar in that it involved an alleged act of eminent domain and liability was predicated on an eminent domain concept under the eminent domain provision of the constitution, whereas, in the case at bar the petitioners expressly disavow the concept of taking, do not press their claim on an eminent domain basis or under the eminent domain provision of the constitution, but lay their claims on a violation of due process, an entirely separate constitutional right. The latter has never before been argued in this Court.

The *Clement* case, too, involved eminent domain, not due process.

Sayre v. *City of Cleveland, supra,* concluded with the statement (493 F.2d, at p. 70):

> "[T]here is no de facto taking of properties which have decreased in value because of an urban renewal project unless there is a physical invasion, damage or injury, or a restraint of some type, or action by the City to appropriate such properties."

The entire rationale of the *Sayre* case, although nominally considered in a "due process" frame, is based on the presentation of a claim predicated on a "de facto" taking, an eminent domain concept.

By citing the foregoing cases the Court below has begged the issue, not met it. The Court below has concluded that there has been no taking in the case at bar and that a taking is essential to liability. We agree, although there is authority to the contrary, that there has been no taking. We allege that fact in our complaints. But we assert that he conceded facts of this case have resulted in conceded substantial damages and that the respondents are liable for such damages, not under the eminent domain provision of the Constitution, but under the due process clause.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the judgment and opinion of the Appellate Division of the Supreme Court of the State of New York, Fourth Department.

Respectfully submitted,

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APPENDIX

Opinion of Appellate Division, Fourth Department, 46 A.D.2d 216, 361 N.Y.S.2d 773

DONALD M. FISHER et al., Appellants, v. CITY OF SYRACUSE and Syracuse Urban Renewal Agency, Respondents. Appeal No. 1.

SIDNEY BLUMAN, Individually and as Executor of the Last Will and Testament of Isabel Hurwitz, Deceased, Appellant, v. CITY OF SYRACUSE and Syracuse Urban Renewal Agency, Respondents. Appeal No. 2.

Supreme Court, Appellate Division, Fourth Department.

Dec. 12, 1974.

Before:

MOULE, *J.P.*, and
CARDAMONE, SIMONS, MAHONEY and GOLDMAN, *JJ.*

PER CURIAM:

Appellants seek damages for the diminution in value of their properties and for the increased expense of maintaining them which they allege result from the acts of the City of Syracuse.

The properties are located within an area approved for urban renewal as a part of the City's General Neighborhood Renewal Plan. They were subsequently designated for acquisition by the Common Council. Although the plan was adopted more than 10 years ago, the properties have not been taken and it is claimed that substantial damage has resulted during the interim from this threat of condemnation. Special Term held that in the absence of a "taking" the appellants were not entitled to damages from

the City and dismissed the complaints for failure to state a cause of action (78 Misc.2d 124, 355 N.Y.S.2d 239). We affirm that decision (see Danforth v. United States, 308 U.S. 271, 60 S.Ct. 231, 84 L.Ed. 240; City of Buffalo v. Clement Co., 28 N.Y.2d 241, 321 N.Y.S.2d 345, 269 N.E.2d 895; and cf. opinion at the Appellate Division, 34 A.D.2d 24, 311 N.Y.S.2d 98). Furthermore, without an actual or *de facto* taking of the property the appellants are not entitled to be compensated for damages under the due process and equal protection clauses of the State and Federal Constitutions (see Sayre v. City of Cleveland, 6 Cir., 493 F.2d 64). The judgments should be affirmed.

Judgment affirmed without costs.

MOULE, *J.P.*, and CARDAMONE, SIMONS and MAHONEY, *JJ.*, concur.

GOLDMAN, *J.*, concurs in the following Opinion.

GOLDMAN, *Justice* (concurring):

I concur in affirmance but feel constrained to point out a a substantial wrong which has been visited upon appellants. The facts are not in dispute.

The properties owned by both plaintiffs are situated within a 101 block area within the City of Syracuse designated as the Syracuse Hill Neighborhood Development Program and there are over 1,600 individual parcels of land within the area. In 1962 the Syracuse Urban Renewal Agency, a Department of the City, commenced a comprehensive urban renewal study and made renewal plans for the area in question. The Common Council of the City approved an ordinance authorizing an application by the

City to the federal government for a planning grant for the urban renewal project. On September 12, 1966 the Common Council approved an initial partial acquisition of properties. On October 14, 1966 the City submitted a plan of acquisition for a portion of the renewal area, which plan included the property of appellant Bluman but did not include the property of appellants Fisher. Although the City has acquired title to many of the properties in the area, no proceeding has been commenced to condemn appellants' properties and no compensation has been paid to them.

Special Term found that:

> "It is undisputed that for more than ten years the above events and activities associated therewith were the subject of wide and frequent publicity in the news media in the City of Syracuse and were the subject of frequent correspondence and conferences between the parties in both of the above captioned actions."

In furtherance of the plan many buildings were demolished and others were boarded up in the immediate area where appellants' properties are located. Appellants brought these actions to recover damage for the diminution in property values because of the "condemnation blight" and also for the increased expense of maintaining the properties during this long period of activity by the City. Although there was no "taking", appellants contend that the refusal to grant them "just compensation" is a denial of due process and equal protection guaranteed by the Constitutions of the United States and the State of New York.

Special Term recognized the damages suffered by appellants and stated that the decision it must make was "harsh" in its effect on these property owners. Special Term felt bound, as we do, by Article I, section 7(a) of the State Constitution which specifically limits "just compensation" to property "taken". Our highest State court has clearly recognized this limitation in several decisions and particularly in City of Buffalo v. Clement Co., 28 N.Y.2d 241, 321 N.Y.S.2d 345, 358, 269 N.E.2d 895, 904. No good purpose can be served by citation of the numerous Supreme Court decisions which deal with the question of "just compensation". Danforth v. United States, 308 U.S. 271, 60 S.Ct. 231, 84 L.Ed. 240 is supportive for the determination by Special Term. That case succinctly presents the limitations which constitutionally restrict compensation for "taking" stating, at page 285, 60 S.Ct. at page 236, that "[a] reduction or increase in the value of property may occur by reason of legislation for or the beginning or completion of a project. Such changes in value are incidents of ownership. *They cannot be considered as a 'taking' in the constitutional sense*" (emphasis supplied). Special Term asserted that although it was "sympathetic to the plight of the plaintiffs * * * the principle of *damnum absque injuria* prevails". An eminent jurist of our State, Justice Howard T. Hogan, who has for many years presided almost exclusively over condemnation and appropriation cases, expressed my position on this principle when he wrote in Matter of County of Nassau [Lido Blvd.], 71 Misc.2d 554, 562, 336 N.Y.S.2d 566, 575 that "[t]he doctrine of *damnum absque injuria* to me has always been an immoral, illogical concept and should be declared illegal". It is of little comfort to tell these appellants that, "notwithstanding the

agreed fact that the City has dragged its heels for an inordinately long time (now ten years and into the indefinite future), you have been damaged but that damage is without wrong. True, your properties are now in a vast waste land, without tenants, neither desirable for residential nor commercial use, deteriorating daily but, unfortunately, under the present state of the law you have no recourse". This was the basis of our decision in City of Buffalo v. Clement Co., 34 A.D.2d 24, 28-32, 311 N.Y.S.2d 98, 102-107, which the Court of Appeals held (28 N.Y.2d 241, 257, 321 N.Y.S.2d 345, 358, 269 N.E.2d 895, 904, *supra*) is not the law in this State.

The sole purpose for this writing is the hope that the Legislature will consider the dilemma of these property owners, and literally hundreds of others similarly affected during these days of urban renewal, and will adopt legislation recommending amendment of our State Constitution. Substantially more than half of our sister states, among which are such significant jurisdictions as California, Illinois, Massachusetts and Pennsylvania, now make provision for compensation for property "taken or damaged". The New York State Constitutional Convention of 1967 proposed a new Constitution which contained in Article 1, section 7(a) the provision that "[P]rivate property shall not be taken or damaged, as such latter term is defined by law, without just and timely compensation". Since the refusal of the electorate to adopt the new Constitution, the Legislature has been taking action on these provisions on which there is a consensus as to their desirability. I respectfully suggest to the Legislature that the subject of this opinion is a matter which should be given prompt and favorable consideration.

Judgment Appealed From—Fisher Case

STATE OF NEW YORK
SUPREME COURT

COUNTY OF ONONDAGA

Case #1

DONALD M. FISHER and MELVIN P. FISHER, as Trustees under the Last Will and Testament of BERNARD FISHER, Deceased; ROSLYN MILLER; BERNICE GOLD and PHILIP ADLER,

Plaintiffs,

—v.—

CITY OF SYRACUSE and SYRACUSE URBAN RENEWAL AGENCY,

Defendants.

A motion having been made by the defendants for judgment dismissing the complaint in the above-captioned action pursuant to CPLR 3211, and the motion having regularly come on to be heard at a Special Term of this court on the 15th day of January, 1974, and the defendants appearing by Harold T. Limpert, and the plaintiffs, appearing by Raphael, Searles, Vischi & Sackman, Julius L. Sackman, as counsel, and the motion having been granted and a memorandum decision dated March 27, 1974, directing that the complaint in the above entitled actions be dismissed and an order granting said motion having been filed and entered May 15, 1974,

Judgment Appealed From—Fisher Case

Now, on motion of Harold T. Limpert, attorney for the defendants, it is

ADJUDGED, that the defendants have judgment against the plaintiffs dismissing the complaint.

Judgment signed this 24 day
of May, 1974.

/s/ JAMES D. GORHAM
Acting Onondaga County Clerk

Judgment Appealed From—Bluman Case

STATE OF NEW YORK
SUPREME COURT

COUNTY OF ONONDAGA

Case #2

SIDNEY BLUMAN, Individually and as Executor of the Last Will and Testament of ISRAEL HURWITZ, Deceased,

Plaintiff,

—v.—

CITY OF SYRACUSE and SYRACUSE URBAN RENEWAL AGENCY,

Defendants.

A motion having been made by the defendants for judgment dismissing the complaint in the above-captioned action pursuant to CPLR 3211, and the motion having regularly come on to be heard at a Special Term of this court on the 15th day of January, 1974, and the defendants appearing by Harold T. Limpert, and the plaintiff appearing by Raphael, Searles, Vischi & Sackman, Julius L. Sackman, as counsel, and the motion having been granted and a memorandum decision dated March 27, 1974, directing that the complaint in the above-entitled actions be dismissed and an order granting said motion having been filed and entered May 15, 1974,

Now, on motion of Harold T. Limpert, attorney for the defendants, it is

Judgment Appealed From—Bluman Case

ADJUDGED, that the defendants have judgment against the plaintiff dismissing the complaint.

Judgment signed this 24 day
of May, 1974.

/s/ JAMES D. GORHAM
Acting Onondaga County Clerk

Opinion of Special Term, Onondaga County, 78 Misc.2d 124, 355 N.Y.S.2d 239

DONALD M. FISHER *et al.*, *Plaintiffs* v. CITY OF SYRACUSE and Syracuse Urban Renewal Agency, *Defendants*.

SIDNEY BLUMAN, Individually and as Executor of the Last Will and Testament of Israel Hurwitz, Deceased, *Plaintiff* v. CITY OF SYRACUSE and Syracuse Urban Renewal Agency, *Defendants*.

Supreme Court, Onondaga County

March 27, 1974

WILLIAM R. ROY, *Justice*.

The defendants in each of the above entitled actions have moved, pursuant to C.P.L.R. 3211 to dismiss the complaints on the ground that they fail to state a cause of action. Since both cases involve common questions of law and fact, this Court will consider them together.

In considering these motions to dismiss, the Court will apply the rules of liberal construction of the pleadings; Walkovsky v. Carlton, 18 N.Y.2d 414, 276 N.Y.S.2d 585, 223 N.E.2d 6; C.P.L.R. 3026; the acceptance as true of the material allegations of fact contained in the complaints and the truth of any reasonable inferences that may be drawn therefrom; Garvin v. Garvin, 306 N.Y. 118, 116 N.E. 2d 73; and that if any cause of action can be spelled out from the facts alleged, the motion must be denied, Dulberg v. Mock, 1 N.Y.2d 54, 150 N.Y.S.2d 180, 133 N.E.2d 695.

The facts giving rise to the instant litigation are without dispute. The plaintiffs in each action claim to be owners or parties in interest to real property situated within a 101 block area within the City of Syracuse and known as the

Syracuse Hill Neighborhood Development Program. This is a designated urban renewal area and contains over 1,600 individual parcels of land.

Defendant, City of Syracuse, is the governing body and the Syracuse Urban Renewal Agency is the department delegated by the City to carry out the functions vested in the Agency which was established pursuant to Article 15A of the General Municipal Law of the State of New York.

A brief review of the history of the Syracuse Hill Neighborhood Development Program will be helpful in the determination of these motions.

Beginning in 1962 comprehensive urban renewal plans were commenced in the form of a general neighborhood renewal plan in the area in question.

In April of 1964 the Common Council of the City of Syracuse approved an ordinance authorizing City sponsorship of an application to the Federal Government for a planning grant in connection with the above urban renewal project and thereafter received such grant for the study. The properties owned by the plaintiffs in both of the above entitled actions were within the planning grant area.

On September 12, 1966, the Common Council of the City of Syracuse approved an initial partial acquisition for purposes of the plan.

On October 14, 1966, the City submitted a plan of acquisition for another part of the renewal area, which plan included the property of the plaintiffs, Bluman, in the second action. It is conceded that at no time was the property of the plaintiffs in the first action ever included within the plan.

In June 10, 1969, the Common Council of the City of Syracuse changed the project from General Neighborhood

Renewal Plan to Neighborhood Development Plan and this was approved by the Common Council of the City on June 22, 1969. It is undisputed that for more than ten years the above events and activities associated therewith were the subject of wide and frequent publicity in the news media in the City of Syracuse and were the subject of frequent correspondence and conferences between the parties in both of the above captioned actions.

In implementing the foregoing plans and authorizations the defendants have acquired title to many parcels located within the urban renewal area and to several parcels in each of the blocks located within the City, in which the plaintiffs' properties are located. Many buildings have been demolished in furtherance of the plan and others have been boarded up.

The plaintiffs, feeling aggrieved as a result of the action of the City and the Agency, commenced these actions by a summons and complaint dated October 5, 1973.

In each of the complaints the history of ownership of the property is alleged and the activities of the City and the Agency as set forth above were outlined.

The complaints in each action contain similar allegations with respect to the activities of the City. Both of the complaints contain the following paragraphs:

> "As a result of the inordinately long and dilatory tactics of the defendants, the vicinity of the plaintiff's property has suffered a condemnation blight which has transformed the area into one which is highly undesirable for either residential or commercial purposes. The area has become a high-crime area, vandalism is rampant, and it is not safe to live or work there. Both

> residential and commercial tenants have moved from the area, the plaintiff has lost substantial amounts of rental income, he has been placed in a special insurance pool which has forced him to pay excessive premiums, he has been compelled to expend monies to protect the property from vandalism, and his property has been drastically reduced in value."
>
> "By reason of the foregoing the plaintiff has been deprived of due process of law and of the equal protection of the laws, in violation of the Fourteenth Amendment of the United States Constitution and of Article I, Sections 6 and 11 of the New York State Constitution."

In the Bluman complaint there is an allegation that the property was designated for acquisition but that no proceedings were commenced to condemn the property, nor was any step taken to compensate the Blumans for the damage allegedly sustained by them.

The Fisher complaint contains an allegation to the effect that although their property was in the urban renewal area, no proceedings have been commenced to condemn the property nor has anything been done to compensate plaintiffs in that action for the damage allegedly suffered by them.

Thus, the only difference between the two actions is that in the Bluman case the property was designated for condemnation, but has not as yet been taken and in the Fisher case the property was not designated for condemnation.

It is the plaintiffs' contention, in both actions, and, as appears by the complaints, that as a result of the actions of the defendants, the vicinity of the plaintiffs' property

has suffered a "condemnation blight". This, they allege, has transformed the area into one which is highly undesirable for either residential or commercial purposes; it has become a high crime rate area where vandalism is rampant and where it is not safe to live or work. Plaintiffs further allege that tenants have moved from the area, resulting in loss of rental income. Further, plaintiffs claim that they have been forced to pay excessive insurance premiums and that they have been compelled to expend monies for the protection of their property from vandalism and that the properties have been reduced in value.

The plaintiffs contend that they should be compensated, because of the so-called condemnation blight, for loss of income from the properties, depreciation in value, and additional costs incurred in protecting the property from vandalism, as well as increased insurance premiums. They contend that the actions of the defendants amount to a constitutional deprivation of due process and equal protection of the laws pursuant to the Fifth and Fourteenth Amendments of the United States Constitution.

It is important to point out that in both of these actions the plaintiffs are not claiming that the defendants have *taken* their property, either by *de jure* or *de facto* (inverse) condemnation. Nor do they seek to compel the defendant to condemn the properties. As this Court reads the complaints, the plaintiffs claim that they should be compensated for damages sustained by them as a result of the activities of the defendants in creating what is referred to as a "condemnation blight" in the vicinity of their properties.

In order to understand and properly evaluate the complaints of the plaintiffs, it is necessary to examine the law in connection with condemnation and appropriation. As

was stated in City of Buffalo v. J. W. Clement Co., 28 N.Y.2d 241 at pg. 255, 321 N.Y.S.2d 345 at pg. 357, 269 N.E.2d 895 at pg. 903, ". . . 'condemnation blight' relates to the impact of certain acts upon the value of the subject property. It in no way imports a *taking* in the constitutional sense, but merely permits of a more realistic valuation of the condemned property in the subsequent *de jure* proceeding." It thus can be seen that condemnation blight is not a cause of action, but in reality is a rule of evidence of valuation of real property that has been the subject of a taking in condemnation, *de jure* or *de facto*.

The Fifth Amendment to the U.S. Constitution provides, as pertinent to this decision, ". . . nor shall private property be taken for public use without just compensation."

The Fourteenth Amendment, so far as is pertinent to this decision provides, ". . . nor shall any State deprive any person of life, liberty or property, without due process; . . .". Article 1, § 6 of the New York State Constitution provides, as far as is pertinent to this decision, as follows: ". . . no person shall be deprived of life, liberty or property without due process of law."

It is in light of these provisions of the Federal and State Constitutions and upon the case law that we must determine whether the actions of the defendants, although concededly not constituting a "taking" of property in its accepted legal sense, i.e., *de facto* or *de jure* appropriation, give rise to a cause of action for diminution in property values and increase in costs of maintenance and protection of those properties.

The Fifth Amendment provides the basis for compensation for property taken for public use. This provision refers only to direct appropriations. Laycock v. Kenney,

9 Cir., 270 F.2d 580, cert. den. 361 U.S. 933, 80 S.Ct. 373, 4 L.Ed.2d 355 (1960), and was never supposed to have any bearing upon or inhibit laws that indirectly work harm and loss to individuals. Knox v. Lee, 79 U.S. 457, 20 L.Ed. 287 (1870).

Furthermore, as was stated in Danforth v. United States, 308 U.S. 271 at pg. 285, 60 S.Ct. 231 at pg. 236, L.Ed. 240 (1939), ". . . a reduction or increase in the value of property may occur by reason of legislation for or the beginning or a project. Such changes in value are incidents of ownership. They cannot be considered as a 'taking' in the constitutional sense."

It thus can be seen that under the Federal law the actions of the defendants do not amount to a "taking". Inasmuch as these acts do not amount to a "taking", under the Federal law, then there can be no deprivation of constitutional due process. Danforth v. United States, *supra*.

In the landmark New York case of City of Buffalo v. Clement Co., *supra*. 28 N.Y.2d at pg. 257, 321 N.Y.S. at pg. 359, 269 N.E.2d at pg. 904, Judge Scileppi, after a review of authorities, stated the policy of the State of New York is:

> ". . . to deny recovery in the absence of a substantial impairment of claimant's right to use or enjoy the property at any time prior to the date of final appropriation. Accordingly, the mere announcement of impending condemnations, coupled as it may well be with substantial delay and damage, does not, in the absence of other acts which may be translated into an exercise of dominion and control by the condemning authority, constitute a taking so as to warrant awarding compensation."

In addition, the Court of Appeals of the State of New York has previously stated: "But acts done in the proper exercise of governmental powers, and not directly encroaching upon private property, though their consequences may impair its use, are universally held not to be a taking within the meaning of the constitutional provision. They do not entitle the owner of such property to compensation . . . or give him any right of action." Sauer v. City of New York, 180 N.Y. 27, 32-33, 72 N.E. 579, 580, aff'd 206 U.S. 536, 27 S.Ct. 686, 51 L.Ed. 1176.

Assuming the allegations of the complaints to be true, there is no question that the plaintiffs in each of the above entitled actions have suffered damages. It may very well be that the damages that the plaintiffs would be able to prove might far exceed the fair market value of the properties to which the owners might be entitled in condemnation proceedings. However, the mere fact that someone has suffered damage does not give rise to a cause of action, unless the cause of action has a legal basis. The items of damages alleged by the plaintiffs were not actually taken by the defendants. They are not "property" within the contemplation of the eminent domain clauses of the Federal or State Constitutions.

This Court is unable to find any case, Federal or State, which supports the theory upon which plaintiffs base their cause of action.

Plaintiffs, in their brief, cite the case of Luber v. Milwaukee County, 47 Wis.2d 271, 177 N.W.2d 380 (1970), in support of their position. That case involved the interpretation of a Statute which purported to limit the amount of rental loss which might be recovered in a condemnation case. The Court held in that case that the Statute was un-

constitutional insofar as it limited compensation for rental loss, stating that ". . . one's interest in rental loss is such as is required to be compensated under the 'just compensation' clause of Article 1, sec. 13, Wis.Const. sec. 32.19(4), Stats. . . .".

What the Court was determining in that case was that once you have determined what is "just compensation", any attempt to limit that "just compensation" would be unconstitutional.

The other cases cited by the plaintiffs in their brief involve instances of either *de jure* or *de facto* appropriation and did not involve the precise question here presented for determination by this Court. The case of Levine v. City of New Haven, 30 Conn.Sup. 13, 294 A.2d 644 (1972), cited by the defendant, involved a complaint which the Court determined to be one for inverse condemnation (a *de facto* taking). The case thus involved the question of whether the acts of the City of New Haven constituted a "taking" in the constitutional sense. That case differs from the above captioned cases in that there is no claim by either plaintiff that the acts of the defendants constitute a "taking".

It might be pointed out that once it has been determined that a "taking" has occurred, then all of the rights of the plaintiffs to constitutional due process must be observed. This necessarily involves notice to the property owner and an opportunity for him to be heard on the question of "just compensation".

Prior to a determination that property has been taken within the constitutional sense, that is by a direct appropriation, Laycock v. Kenney, *supra,* be it *de jure* or *de facto,* there is no constitutional deprivation of due process.

Danforth v. United States, *supra;* City of Buffalo v. Clement Co., *supra.*

Although the Court is sympathetic to the plight of the plaintiffs in these cases, it finds no constitutional or case authority in support of the causes of action alleged in the complaints. As harsh as it may be, the principle of *damnum absque injuria* prevails, and the complaints in each of the above entitled actions are, accordingly, dismissed on the ground that they fail to state a cause of action.

Order of Court of Appeals of State of New York denying leave to appeal

STATE OF NEW YORK
COURT OF APPEALS

At a session of the Court, held at Court of Appeals Hall in the City of Albany on the nineteenth day of March A.D. 1975.

Present,

HON. CHARLES D. BREITEL,

Chief Judge, presiding.

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4 Mo. No. 64

DONALD M. FISHER & ANO., as Trustees &c. of Bernard Fisher, deceased, &ors.,

Appellants,

—v.—

CITY OF SYRACUSE, &ORS.,

Respondents.

& ano. action—

BLUMAN v. CITY OF SYRACUSE.

A motion for leave to appeal to the Court of Appeals in the above causes having been heretofore made upon the part of the appellants herein and papers having been duly submitted thereon and due deliberation thereupon had:

Order of Court of Appeals of State of New York denying leave to appeal

ORDERED, that the said motion be and the same hereby is denied with twenty dollars costs and necessary reproduction disbursements.

JOSEPH W. BELLACOSA
Clerk

Judgment of Supreme Court, Onondaga County, upon remittitur from Court of Appeals (both actions)

STATE OF NEW YORK
SUPREME COURT

COUNTY OF ONONDAGA

Index No. 74-2090

SIDNEY BLUMAN, Individually and as Executor of the last Will and Testament of Israel Hurwitz, deceased,

Plaintiff,

—v.—

CITY OF SYRACUSE and SYRACUSE URBAN RENEWAL AGENCY,

Defendants.

DONALD M. FISHER & ano., as Trustees of Bernard Fisher, et al.,

Plaintiffs,

—v.—

CITY OF SYRACUSE and SYRACUSE URBAN RENEWAL AGENCY,

Defendants.

The above named appellants, Sidney Bluman, Donald M. Fisher, et al, moved for leave to Appeal to the Court of Appeals, said motion returnable January 27, 1975, from an Order of the Appellate Division of this Court, Fourth Judicial Department, affirming the judgment entered on

Judgment of Supreme Court, Onondaga County, upon remittitur from Court of Appeals (both actions)

the 24th day of May, 1974, in the office of the Clerk of the County of Onongada, said judgment dismissed the appellant's complaint and the Court of Appeals having denied said motion for leave to appeal by order dated March 19, 1975, a copy of which is attached hereto, said order granting respondents, City of Syracuse and Syracuse Urban Renewal Agency costs of twenty dollars ($20.00) and necessary reproduction disbursements ($131.20),

Now, on motion of Thomas J. Lowery, Jr., Special Counsel for the City of Syracuse, it is

ORDERED, ADJUDGED AND DECREED that pursuant to the aforementioned Order of the Court of Appeals, that the respondents, City of Syracuse and Syracuse Urban Renewal Agency, recover of appellants, Sidney Bluman, individually and as Executor of the last Will and Testament of Israel Hurwitz, Donald M. Fisher, et al., the sum of twenty dollars ($20.00) costs together with necessary reproduction costs in the sum of $131.20, amounting in all to $151.20 and that respondents have execution therefor.

Judgment signed this 31th day of March, 1975.

s/ JAMES D. GORHAM
Clerk

s/ HELDA H. YOUNG
Deputy Co. Clerk

Complaint—Fisher Case

SUPREME COURT
OF THE STATE OF NEW YORK

COUNTY OF ONONDAGA

DONALD M. FISHER and MELVIN P. FISHER, as Trustees under the Last Will and Testament of BERNARD FISHER, deceased, ROSLYN MILLER, BERNICE GOLD and PHILIP ADLER,

Plaintiffs,

—against—

CITY OF SYRACUSE and SYRACUSE URBAN RENEWAL AGENCY,

Defendants.

The Plaintiffs, complaining of the Defendants, by Raphael, Searles, Vischi & Sackman, their attorneys, allege as follows:

1. The plaintiffs, Donald M. Fisher and Melvin P. Fisher, as Trustees under the Last Will and Testament of Bernard Fisher, deceased, are the owners in fee of an undivided five-eighths interest in the real property hereinafter described and the plaintiffs, Roslyn Miller, Bernice Gold and Philip Adler, are the owners, each of an undivided one-eighth interest in the real property hereinafter described.

2. The defendant, City of Syracuse, is a municipal corporation of the State of New York and the defendant, Syracuse Urban Renewal Agency, is a body corporate and politic.

3. The plaintiffs are the owners in fee simple absolute of two tracts of land described as follows:

Tract I. All that track or parcel of land situate in the City of Syracuse, County of Onondaga and State of New York, and known and designated as being all that part of Lots Numbers Thirty-five (35) and Thirty-six (36) in Block Number Two hundred ten (210) in said City and bounded and described as follows, viz.: Beginning at the southwest corner of said block, and running from thence north along the east line of Crouse Avenue sixthy-nine (69) feet; thence east parallel with the south line of said Block fifty-seven and three quarters (57¾) feet; thence south, parallel with the first course sixty-nine (69) feet to the north line of E. Fayette Street, and thence, west along the north line of East Fayette Street, Fifty-seven and three-quarters (57¾) feet to the place of beginning.

Tract II. All that tract and parcel of land located in the 15th Ward of the City of Syracuse being Lot P. 35 Blk. 210 at 217, 221-227 So. Crouse Ave., approx. 63 x 132 and L. 3 x 14.25 ft. in dimension, vacant; and being Book 1 Plate 105 Parcel 109 of the official tax map of the City of Syracuse. Said parcel now being designated as approx. 63 x 132 and L. 2 x 74.25 ft. in dimension on the tax maps of the City of Syracuse. Said premises being more particularly described as: All that tract or parcel of land, situate in the City of Syracuse, County of Onondaga and State of New York, conveys all that piece or parcel of land known as Lot No. 35 of Blk. 210 of the former Village of Lodi, according to a map made by Calvin Guiteau in the year 1833 for Teall, Burt & Baldwin, and on file in the Clerk's office of Onondaga County. Reserving from

said above lot 35 a strip of land on the south side of said lot as contained in a deed given by Jesse B. Gaylord and Anna O. Gaylord to Walter E. Banning, dated Dec. 16, 1871, recorded Dec. 23, 1871 Book 190 at page 289&c.

Excepting therefrom all that tract or parcel of land situate in the City of Syracuse, County of Onondaga, State of New York and being part of Lot No. 35, Block No. 210, and being more particularly described as follows: Beginning at a point in the easterly line of South Crouse Avenue, said point being 132 feet northerly of the northerly line of East Fayette Street as measured along said line of South Crouse Avenue, said point of beginning also being the northwest corner of said lot No. 35. Thence easterly along the northerly line of said Lot No. 35 and parallel to East Fayette Street a distance of 132 feet to the northeast corner of said lot. Thence southerly along the easterly line of said Lot No. 35 a distance of 66 feet to the southeast corner of said lot. Thence westerly along the southerly line of said lot a distance of 56.25 feet to a point. Thence northerly parallel to said line of South Crouse Avenue a distance of 56 feet to a point. Thence westerly parallel to said East Fayette Street and the northerly line of said Lot No. 35, a distance of 75.75 feet to a point in said line of South Crouse Avenue; thence northerly along said line of South Crouse Avenue, a distance of 10 feet to the place of beginning.

4. Title in fee to the above described property was acquired by the plaintiffs and/or their predecessors through the following deeds: As to Tract I, by deed from

Rahkin Holding Company and Rahkin Holding Corporation to Aaron Adler and Bernard Fisher, dated January 14, 1946, and recorded in the office of the County Clerk of Onondaga County on January 15, 1946 in Liber 1185 of Deeds, at page 256; as to Tract II, by deed from City of Syracuse to Aaron Adler and Bernard Fisher, dated April 6, 1954, and recorded in the office of the County Clerk of Onondaga County on June 4, 1954 in Liber 1968 of Deeds, at page 581; as to both tracts, by deed and assignment of claim from Irving Adler to Donald M. Fisher and Melvin P. Fisher, as Trustees under the Last Will and Testament of Bernard Fisher, deceased, dated October 1, 1973, and recorded in the office of the County Clerk of Onondaga County on October 10, 1973 in Liber 2514 of Deeds, at page 996.

5. Aaron Adler, the owner, as tenant in common, of an undivided half-interest in the above described property, died testate on January 5, 1962, his Will was probated in the Surrogate's Court of Onondaga County on January 23, 1962, and under his Will, upon the death of his widow, Lottie Adler, on March 23, 1971, title to the above-described property devolved upon his children, Roslyn Miller, Bernice Gold, Philip Adler and Irving Adler.

6. Bernard Fisher, the owner, as Tenant in common, of the other undivided half-interest in the above described property, died testate on January 12, 1969, his Will was probated in the Surrogate's Court of Onondaga County on February 10, 1969, and Letters of Trusteeship were issued in his estate to Donald M. Fisher and Melvin P. Fisher on June 23, 1969.

7. Beginning in 1962 plans, affecting the area in which the above described property is located, were commenced

for a comprehensive urban renewal in the form of a General Neighborhood Renewal Plan. In April of 1964 the Common Council of the City of Syracuse approved an ordinance authorizing City sponsorship of an application to the Federal Government for a planning grant and thereafter received a grant. On September 12, 1966 the Common Council approved an initial partial acquisition for the purposes of the plan. On October 14, 1966 the City of Syracuse submitted a plan of acquisition of another part of the renewal area, which plan included plaintiff's above described property. On June 10, 1969 the Common Council of the City of Syracuse changed the project from General Neighborhood Renewal Plan to Neighborhood Development Plan and on June 22, 1969 the Common Council approved the project. For more than ten years the above mentioned events and activities associated with such events were the subject of wide and frequent publicity in the newspapers in the City of Syracuse and the subject of correspondence and conferences between the parties to this action.

8. Pursuant to the foregoing plans and authorizations the defendants have acquired title to many parcels in the area and to several parcels in the very block in which the plaintiffs' above described property is located. Many buildings have been demolished and others have been boarded up.

9. As a result of the inordinately long and dilatory tactics of the defendants, the vicinity of the plaintiffs' property has suffered a condemnation blight which has transformed the area into one which is highly undesirable for either residential or commercial purposes. The area has become a high-crime area, vandalism is rampant, and it is not safe to live or work there. Both residential and

commercial tenants have moved from the area, the plaintiffs have lost substantial amounts of rental income, they have been placed in special insurance pool which forced them to pay excessive premiums, they have been compelled to expend monies to protect the property from vandalism, and their property has been drastically reduced in value.

10. Although the above described property is in the renewal area, no proceedings have been commenced to condemn the said property nor has any step been taken to compensate the plaintiffs for the damage which they have suffered as a result of the foregoing action of the defendants.

11. By reason of the foregoing the plaintiffs have been deprived of due process of law and of the equal protection of the laws, in violation of the Fourteenth Amendment of the United States Constitution and of Article I, Sections 6 and 11 of the New York State Constitution.

WHEREFORE plaintiffs demand judgment against the defendants for the damages sustained by them as a result of the matters alleged herein in the sum of Three Hundred Fifty Thousand Dollars ($350,000.00), together with the costs and disbursements of this action.

RAPHAEL, SEARLES, VISCHI & SACKMAN
Attorneys For Plaintiffs
150 State Street
Albany, New York 12207
Tel. 518-465-0800

Complaint—Bluman Case

SUPREME COURT
OF THE STATE OF NEW YORK

COUNTY OF ONONDAGA

SIDNEY BLUMAN, individually and as Executor of the Last Will and Testament of ISRAEL HURWITZ, deceased,

Plaintiff,

—against—

CITY OF SYRACUSE and SYRACUSE URBAN RENEWAL AGENCY,

Defendants.

The Plaintiff, complaining of the Defendants, by Raphael, Searles, Vischi & Sackman, his attorneys, alleges as follows:

1. The plaintiff, Sidney Bluman, as an individual, is the owner in fee of an undivided one-half interest in the real property hereinafter described and the plaintiff, Sidney Bluman, as Executor of the Last Will and Testament of Israel Hurwitz, deceased, has a power of sale under the said will as to the other one-half interest in the real property hereinafter described.

2. The defendant, City of Syracuse, is a municipal corporation of the State of New York and the defendant, Syracuse Urban Renewal Agency, is a body corporate and politic.

3. The plaintiff is the owner in fee simple absolute and/or has the power of disposition of such fee of two tracts of land described as follows:

Tract I. All that piece or parcel of land situate in the City of Syracuse, County of Onondaga, and State of New York, known and distinguished as being part of Lot Number 86 of Block Number 211 of said City and bounded and described as follows, viz: Beginning at a point on the northerly line of East Fayette Street, 66 feet easterly from the southwesterly corner of said block; running thence easterly along the south line of said block 39.33 feet; thence northerly a distance of 131.34 feet to the north line of said Lot at a point 38.72 feet from the northwest corner of said lot; thence westerly along the north line of said lot 38.72 feet to the northwest corner thereof; thence southerly along the west line of said lot to the place of beginning; being the premises commonly known as 1105 East Fayette Street in said City.

Tract II. All that piece or parcel of land situate in the City of Syracuse, County of Onondaga, and State of New York, known and distinguished as the westerly one-half of Lot No. 88 in Block No. 211 of said City; said parcel being on the north side of East Fayette Street and being 33 feet front and rear and extending back by parallel lines about 132 feet; and being the premises commonly known as 1113 East Fayette Street in said City.

4. Title in fee to the above described property was acquired by the plaintiff and/or his predecessor through the following deeds: As to Tract I, by deed from James V.

Henry, Sr., to Sidney Bluman and Israel Hurwitz, dated February 22, 1963, and recorded in the office of the County Clerk of Onondaga County on February 26, 1963, in Liber 2133 of Deeds, at page 112; as to Tract II, by deed from Eugene Frank Fullerton to Sidney Bluman and Israel Hurwitz, dated May 11, 1963, and recorded in the office of the County Clerk of Onondaga County on May 14, 1963, in Liber 2143 of Deeds, at page 536.

5. Israel Hurwitz, the owner, as Tenant in common, of an undivided half-interest in the above described property, died testate on November 2, 1971, his Will was probated in the Surrogate's Court of Onondaga County on January 14, 1972, and Letters Testamentary were issued in his estate to Sidney Bluman on January 14, 1972. Under said Will the Executor has a full, complete, and unqualified power of sale.

6. Beginning in 1962, plans affecting the area in which the above described property is located, were commenced for a comprehensive urban renewal in the form of a General Neighborhood Renewal Plan. In April of 1964 the Common Council of the City of Syracuse approved an ordinance authorizing City sponsorship of an application to the Federal Government for a planning grant and thereafter received a grant. On September 12, 1966 the Common Council approved an initial partial acquisition for the purposes of the plan. On October 14, 1966 the City of Syracuse submitted a plan of acquisition of another part of the renewal area, which plan included plaintiff's above described property. On June 10, 1969 the Common Council of the City of Syracuse changed the project from General Neighborhood Renewal Plan to Neighborhood Development Plan,

and on June 22, 1969 the Common Council approved the project. For more than ten years the above-mentioned events and activities associated with such events were the subject of wide and frequent publicity in the newspapers in the City of Syracuse and the subject of correspondence and conferences between the parties to this action.

7. Pursuant to the foregoing plans and authorizations the defendants have acquired title to many parcels in the area and to several parcels in the very block in which the plaintiff's above described property is located. Many buildings have been demolished and others have been boarded up.

8. As a result of the inordinately long and dilatory tactics of the defendants, the vicinity of the plaintiff's property has suffered a condemnation blight which has transformed the area into one which is highly undesirable for either residential or commercial purposes. The area has become a high-crime area, vandalism is rampant, and it is not safe to live or work there. Both residential and commercial tenants have moved from the area, the plaintiff has lost substantial amounts of rental income, he has been placed in a special insurance pool which has forced him to pay excessive premiums, he has been compelled to expend monies to protect the property from vandalism, and his property has been drastically reduced in value.

9. Although plaintiff's property throughout the foregoing periods has been designated for acquisition, no proceedings have been commenced to condemn the said property nor has any step been taken to compensate the plaintiff for the damage which he has suffered as a result of the foregoing action of the defendants.

10. By reason of the foregoing the plaintiff has been deprived of due process of law and of the equal protection of the laws, in violation of the Fourteenth Amendment of the United States Constitution and of Article I, Sections 6 and 11 of the New York State Constitution.

WHEREFORE, plaintiff demands judgment against the defendants for the damages sustained by him individually and as Executor of Last Will and Testament of Israel Hurwitz, deceased, as a result of the matters alleged herein in the sum of Two Hundred Thousand Dollars ($200,000.00), together with the costs and disbursements of this action.

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